Supreme Court, U.S.
FILED
MAY 2 - 2000
CLERK

No. 99-1624

IN THE

Supreme Court of the United States

ATC PARTNERSHIP,

Petitioner,

v.

TOWN OF WINDHAM, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CONNECTICUT SUPREME COURT

BRIEF IN OPPOSITION FOR RESPONDENTS NORTHEAST CONNECTICUT ECONOMIC ALLIANCE, INC., *et al.*

LISA SILVESTRI
56 Arbor Street
Hartford, Connecticut 06106
(860) 231-9664

Attorneys for Respondents
Northeast CT Economic Alliance, Inc.,
Geri W. Langlois, Gail O. Mellow,
Giacomo J. Guarnaccia, Jr.,
Betti Kuszaj, Timothy W. McNally,
Robert E. Miller, Demetrios Pachis,
James A. Weiss and Donald E. Williams

159510

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

STATEMENT PURSUANT TO RULE 29.6

Respondent, Northeast Connecticut Economic Alliance, Inc., is a Connecticut nonprofit corporation. It has no parent corporation and does not issue stock.

TABLE OF CONTENTS

Page

Statement Pursuant To Rule 29.6 i

Table of Cited Authorities iii

Statement Of The Case 1

Reasons For Denying The Writ 3

I. The Decision Of The Connecticut Supreme Court Does Not Conflict With Decisions Of The United States Court Of Appeals Or The United States Supreme Court 3

II. The Rule Of Law Was Properly Applied To The Facts By The Connecticut Supreme Court 5

III. ATC Has Relied On Case Law Which Has Been Overruled Or Is Inappropriate 7

Conclusion 9

TABLE OF CITED AUTHORITIES

Page

Cases:

Albright v. Oliver, 510 U.S. 266, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994) 4

Armendariz v. Penman, 75 F.3d 1311 (9th Cir. 1996) 7, 8

County of Sacramento v. Lewis, *supra*, 523 U.S. 846 4

Daniels v. Williams, 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986) 6

Graham v. Connor, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989) 4, 6

Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965) 5

Loving v. Virginia, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967) 5

Rochin v. California, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952) 4, 5

Sinalowa Lake Owners Association v. City of Simi Valley, 882 F.2d 1398 (9th Cir. 1989) 7

United States v. James Daniel Good Real Property, 510 U.S. 43, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993) 8

Cited Authorities

	Page
Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985)	2, 6
Statute:	
42 U.S.C. § 1983	2, 4
United States Constitution:	
Fourth Amendment	6
Fifth Amendment	6
Rules:	
United States Supreme Court Rule 10	3, 5
United States Supreme Court Rule 10(b)	3
United States Supreme Court Rule 10(c)	3

STATEMENT OF THE CASE

The plaintiff was the owner of the American Thread Complex (hereinafter "ATC"), a piece of real property located in Windham, Connecticut. The complex premises also housed items of personal property belonging to the plaintiff. On or about August 12, 1994, defendants acted to condemn the complex for the purpose of an ongoing economic redevelopment in northeastern Connecticut. The condemnation is the subject of a separate action brought in the Superior Court in the Judicial District of Windham, and currently pending in the Connecticut Supreme Court, *Northeast Connecticut Economic Alliance, Inc. v. ATC Partnership*, Docket Nos. SC 16245 and SC 16246.

Prior to the condemnation, the plaintiff and some of the defendants had engaged in unsuccessful negotiations for the sale of the complex for the aforementioned economic redevelopment. The plaintiff has alleged that although it had engaged at all times in good faith negotiations the defendants had "plotted, planned and conspired to usurp the economic development of said project as well as the personal property located therein to confiscate same by whatever means were expedient to accomplish said purpose." The plaintiff further alleges that, in order to exert pressure on it to accept defendants' terms for purchase, the defendants ordered the Windham Tax Collector to levy an improper alias tax warrant on the personal property contained in the complex. The plaintiff also claimed that the defendants, prior to the condemnation, unlawfully had ordered officers of the Windham Police Department to prevent the plaintiff from exercising control over, and gaining access to, the complex and the personal property therein.

On March 15, 1995, following the condemnation of its property, ATC commenced this action against the defendants for damages pursuant to 42 U.S.C. § 1983. The basis of the § 1983 claim was that the defendants had condemned the plaintiff's property without just compensation. The Trial Court struck this complaint on the grounds that the plaintiff had not yet exhausted available state remedies, and thus, the plaintiff's claim was not ripe for adjudication. *See Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985). Thereafter, a second complaint by ATC was struck for essentially the same reason that the initial complaint had been struck. ATC then filed the complaint that is the subject of this petition which alleged violation of substantive due process and a corresponding claim pursuant to the Connecticut Constitution. The Trial Court again struck this complaint and the Connecticut Supreme Court affirmed, after finding that the plaintiff's claim did not state a viable cause of action under the due process clause of the Fourteenth Amendment. *See ATC Partnership v. Windham*, 251 Conn. 597 (1999) provided at Appendix 1 to plaintiff's Petition for Writ of Certiorari.

ATC now files the pending petition.

REASONS FOR DENYING THE WRIT

I.

THE DECISION OF THE CONNECTICUT SUPREME COURT DOES NOT CONFLICT WITH DECISIONS OF THE UNITED STATES COURT OF APPEALS OR THE UNITED STATES SUPREME COURT

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. Rule 10, Supreme Court Rules. A Petition for Writ of Certiorari will be granted only for compelling reasons. *Id.* One factor considered in passing upon a Petition for Writ of Certiorari is whether a state court of last resort has decided an important federal question in a way that conflicts with the decision of a United States Court of Appeals. Rule 10(b), Supreme Court Rules. Another factor considered is whether the state court has decided an important federal question in a way that conflicts with relevant decisions of the United States Supreme Court. Rule 10(c), Supreme court Rules. A Petition for a Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

ATC does not argue that the Connecticut Supreme Court improperly stated a rule of law. Instead, ATC argues that the Connecticut Supreme Court improperly applied the rule of law to the facts alleged in the complaint. ATC has, in essence, restated its appeal brief filed before the Connecticut Supreme Court in the current Petition, hoping for a different outcome.

The Connecticut Supreme Court property set forth that in any action under 42 U.S.C. § 1983 "The first step is to identify the exact contours of the underlying right said to have been violated. *County of Sacramento v. Lewis*, 523 U.S. 833, 841 n.5 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998)." *See ATC Partnership v. Windham, supra* at 605. The Connecticut Supreme Court thereafter noted that despite the important role of substantive due process in securing our fundamental liberties, that guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm. *ATC Partnership v Windham, supra* at 606, *citing County of Sacramento v. Lewis, supra*, 523 U.S. at 848. The Court further noted, correctly, that government conduct does not violate substantive due process unless it "shocks the conscience and egregiously transcends the decencies of civilized conduct." *ATC Partnership v. Windham, supra* at 606, *citing County of Sacramento v. Lewis, supra*, 523 U.S. 846 and *Rochin v. California*, 342 U.S. 165, 173, 72 S. Ct. 205, 96 L. Ed. 183 (1952).

Lastly, the Connecticut Supreme Court correctly set forth the rule of law established in *Graham v. Connor*, 490 U.S. 386, 395, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989); *Albright v. Oliver*, 510 U.S. 266, 273, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994) and affirmed in *County of Sacramento v. Lewis, supra* that "where a particular amendment provides an explicit textual source of constitutional protection against a particular sort of governmental behavior, that amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." *ATC Partnership v. Windham, supra* at 607.

Plaintiff has not cited any decisions of the Circuit Courts of Appeal or of this Court, which demonstrate a conflict in the rule of law applied by the Connecticut Supreme Court, thus, the plaintiff's Petition for Writ of Certiorari should be denied.

II.

THE RULE OF LAW WAS PROPERLY APPLIED TO THE FACTS BY THE CONNECTICUT SUPREME COURT

Rule 10 of the Supreme Court Rules notes that a Petition for Writ of Certiorari is rarely granted when the asserted error is the misapplication of a properly stated rule of law. *Id.* The pending Petition is not an example of the rare circumstances in which a Writ of Certiorari should be granted based on the misapplication of a properly stated rule of law to the facts. Although plaintiff makes allegations of misconduct and bad faith by the Town of Windham and its police officers the Connecticut Supreme Court properly found said action to be a far cry from the stomach pumping of *Rochin v. California*, 342 U.S. 165, 171-72, 72 S. Ct. 205, 96 L. Ed. 183 (1952); the attempted regulation of personal decisions regarding marriage or contraceptives in *Loving v. Virginia*, 388 U.S. 1, 12, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967) and *Griswold v. Connecticut*, 381 U.S. 479, 481-82, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965). The Connecticut Supreme Court properly concluded that the type of economic harm alleged in the plaintiff's complaint did not rise to the "conscience shocking level that the United States Supreme Court has set as the standard for violation of substantive due process." *ATC Partnership v. Windham*, *supra* at 609.

Furthermore, the Connecticut Supreme Court properly noted that two specific constitutional provisions, the Fourth Amendment and Fifth Amendment provided explicit textual sources of constitutional protection against the type of governmental conduct alleged in the plaintiff's complaint. *ATC Partnership v. Windham*, *supra* at 611, *citing Graham v. Connor*, *supra*, 490 U.S. at 395. The Court held "if the defendant's seizure of the plaintiff's property prior to condemnation was illegal, that it may be actionable under the Fourth Amendment; if the condemnation itself was improper, then it may be actionable under the takings claims [assuming it was ripe under *Williamson*, *supra*].

Most importantly, the Connecticut Supreme Court recognized and affirmed "the wisdom of the United States Supreme Court's warning against employing our Constitution . . . to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society." *ATC Partnership v. Windham*, *supra* at 612, *citing Daniels v. Williams*, 474 U.S. 327, 332, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986).

For the reasons stated above ATC's Petition for Writ of Certiorari should be denied.

III.

ATC HAS RELIED ON CASE LAW WHICH HAS BEEN OVERRULED OR IS INAPPROPRIATE

ATC continues to rely on the decision of the Ninth Circuit Court of Appeals in *Sinalowa Lake Owners Association v. City of Simi Valley*, 882 F.2d 1398 (9th Cir. 1989), despite the fact that said decision was criticized, distinguished and ultimately overruled by the 9th Circuit seven years later in *Armendariz v. Penman*, 75 F.3d 1311 (9th Cir. 1996). The *Armendariz* Court, in passing on the *Sinalowa* decision, stated

> *Graham* undermined the logic of the cases relied on by the Court in *Sinalowa* . . . *Graham* makes clear that the scope of substantive due process, however ill-defined, does not extend to circumstances already addressed by other constitutional provisions. . . . permitting a plaintiff to bring a substantive due process claim whenever his claims under other constitutional provisions are unsuccessful, as we did in *Sinalowa*, gives the plaintiff, under substantive due process analysis, protection which the Constitution does not afford, gutting the *Graham* rule of all meaning. . . . to the extent that *Sinalowa* stands for the proposition that a plaintiff may bring a substantive due process claim whenever his other claims are unsuccessful, we overrule it now.

Id. at 1325-26. The Connecticut Supreme Court specifically found that the plaintiff's reliance on the *Sinalowa* decision

was misplaced, given that it was overruled by the *Armendariz* decision. *ATC Partnership v. Windham*, *supra* at 609, n.10. The decision of the Connecticut Supreme Court is entirely consistent with the Ninth Circuit's 1996 decision in *Armendariz v. Penman*, *supra*.

In addition, plaintiff relies on the decision of this Court in *United States v. James Daniel Good Real Property*, 510 U.S. 43, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993), notwithstanding that that decision involved a *procedural* due process issue, not a substantive due process issue. ATC was specifically advised by the Connecticut Supreme Court that *United States v. James Daniel Good Real Property*, was a procedural due process decision and, thus, inapposite. *See ATC Partnership v. Windham*, *supra* at 611, n.13. Nonetheless, ATC persists in utilizing this decision in an attempt to create a basis for granting a Writ of Certiorari.

CONCLUSION

Respondents respectfully request the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

LISA SILVESTRI
56 Arbor Street
Hartford, Connecticut 06106
(860) 231-9664

Attorneys for Respondents
Northeast CT Economic Alliance, Inc.,
Geri W. Langlois, Gail O. Mellow,
Giacomo J. Guarnaccia, Jr.,
Betti Kuszaj, Timothy W. McNally,
Robert E. Miller, Demetrios Pachis,
James A. Weiss and Donald E. Williams